

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

DENISE M. GOSSAGE,

Plaintiff,

v.

Case No.: 3:15-cv-04431

**ROBERT MCDONALD, Secretary,
Department of Veterans Affairs,**

Defendant.

PROPOSED FINDINGS and RECOMMENDATIONS

Pending before the Court is a Response of Plaintiff, which the undersigned construes as a motion to voluntarily dismiss the complaint pursuant to Federal Rule of Civil Procedure 41(a)(2).¹ (ECF No. 26). This matter is assigned to the Honorable Robert C. Chambers, United States District Judge, and by Standing Order has been referred to the undersigned United States Magistrate Judge for the submission of proposed findings of fact and recommendations for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). For the reasons that follow, the undersigned **FINDS** that Plaintiff's motion to dismiss should be **GRANTED**; the defendant's Motion to Dismiss, or in the Alternative, for Summary Judgment, (ECF No. 14), should be **DENIED, as moot**; the complaint should be **DISMISSED, without prejudice**; and this action be **REMOVED** from the docket of the Court.

¹ The undersigned construes the document as a motion to dismiss not only based upon the representations contained within the Response of Plaintiff, but also because the plaintiff hand-delivered the document to the Clerk's Office and communicated her decision to dismiss the case at this time.

Fed. R. Civ. P. 41(a)(2) allows the Court to dismiss an action upon the plaintiff's request under terms the Court deems proper. Plaintiff indicates that she has been unable to secure legal representation and does not feel physically or mentally able to prosecute the matter on her own. The undersigned **FINDS** these reasons to provide a legitimate basis upon which to dismiss the complaint, without prejudice. In addition, the undersigned has been advised that the defendant has no objection to a dismissal, without prejudice.

Accordingly, the undersigned respectfully **RECOMMENDS** that the presiding District Judge **DISMISS** the complaint, **without prejudice**. The undersigned further **RECOMMENDS** that the defendant's Motion to Dismiss, or in the Alternative, for Summary Judgment, (ECF No. 14), be **DENIED, as moot**, and this action be **REMOVED** from the docket of the Court.

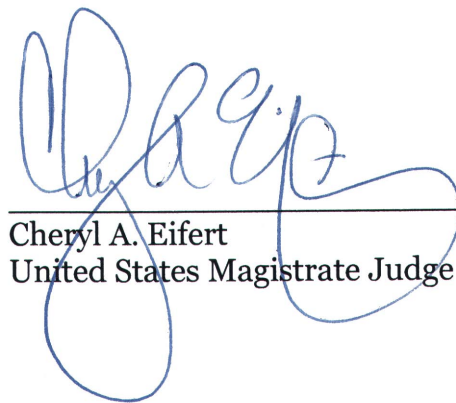
The parties are notified that this "Proposed Findings and Recommendations" is hereby **FILED**, and a copy will be submitted to the Honorable Robert C. Chambers, United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, the parties shall have fourteen days (filing of objections) and three days (mailing) from the date of filing this "Proposed Findings and Recommendations" within which to file with the Clerk of this Court, specific written objections, identifying the portions of the "Proposed Findings and Recommendations" to which objection is made and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of *de novo* review by the District Court and a waiver of appellate review by the Circuit Court of

Appeals. *Snyder v. Ridenour*, 889 F.2d 1363 (4th Cir. 1989); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be provided to the opposing party, Judge Chambers and Magistrate Judge Eifert.

The Clerk is instructed to provide a copy of this “Proposed Findings and Recommendations” to the Plaintiff, counsel of record, and any unrepresented party.

FILED: October 19, 2015



Cheryl A. Eifert
United States Magistrate Judge